



Appeal Decision

Inquiry held on 24 January 2023- 26 January 2023.

Site visit made on 25 January 2023

by Louise Nurser BA (Hons) Dip UP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/L3245/W/22/3306381

Land off Ellesmere Road, Hencote, Shrewsbury, SY4 3AA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Senescura Ltd against the decision of Shropshire Council.
 - The application Ref 21/05743/OUT, dated 7 December 2021, was refused by notice dated 14 April 2022.
 - The development proposed is A Continuing Care Community (Use class C2) comprising up to 164 units of Extra Care and Close Care accommodation with graduated care provided in the form of lodges and apartments; a 75 bed nursing home and Dementia unit; an amenities building providing supporting care facilities, treatment/therapy rooms, fitness pool, restaurant, small shop and site management facilities, with open space, communal gardens, nature trails, landscaping, car parking and supporting infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for a Continuing Care Community (Use class C2) comprising up to 164 units of Extra Care and Close Care accommodation with graduated care provided in the form of lodges and apartments; a 75 bed nursing home and Dementia unit; an amenities building providing supporting care facilities, treatment/therapy rooms, fitness pool, restaurant, small shop and site management facilities, with open space, communal gardens, nature trails, landscaping, car parking and supporting infrastructure at Land off Ellesmere Rd, Shrewsbury, SY4 3AA in accordance with the terms of the application, Ref 21/05743/OUT, dated 7 December 2021, and the plans submitted with it, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. Interested parties have referred to the appeal site falling within the Green Belt. This is not the case.
3. I am aware that the examination of the emerging Shropshire Local Plan (e SLP) is taking place and that the allocation of the site is being pursued, together with consideration of the extent of need for older persons housing. The weight which I attach to this is addressed below. However, the soundness of the policies of the emerging plan is a matter for the examining Inspectors. My attention has been drawn by the appellant to a letter (ID19), dated 15 February 2023, from the examining Inspectors to the Council. This is of direct relevance to the appeal and was not available when the Inquiry was sitting.

The Council has raised no objection to it being provided to me. It references older persons specialist housing amongst other matters, setting out that there is a higher-than-average need for such accommodation within Shropshire and requesting that the Council give further consideration to making provision for this sector of the community.

4. Nonetheless the plan making process has yet to reach formal main modifications. Consequently, there is no certainty how the emerging plan will address this issue. Therefore, I must determine the appeal on the basis of the evidence before me relating to this particular planning application and the current planning policy context. To be clear, given the early stage of the Examination of the e SLP, this means that I have not taken into account the potential impact of the proposed Shrewsbury North Relief Road, nor the proposed housing allocation SHR173 to the west of Ellesmere Road.
5. I have also been referred to the Shrewsbury Big Town Plan which I note has no statutory status.

Procedural Matters

6. The application was submitted in outline, with approval sought for access. Details of layout, landscaping, appearance, and scale are all reserved matters to be determined later.
7. The Council now accepts that all primary residents of the housing would have care needs, and therefore the residential element would fall within Class C2 of the Use Classes Order 1987.
8. The description of the proposed development has been amended during the determination of the appeal. The number of units has been reduced from up to 182 units, to up to 164 units. This reflects amendments which have been made to a live application on the site which has yet to be determined by the Council (22/03369/OUT). The appellant wished to proceed with the appeal on the basis of the revised scheme and the Council has accepted this.
9. At my behest, a joint letter, from both the appellant and the Council, was sent to all those who had previously commented on the appeal proposal explaining the changes to the number of units, and the reduction in building heights in two locations on the height parameter plan.
10. I agree with the Council and appellant that no third-party interests are adversely affected by any of these changes. This is because the plans for the reduced scheme have been subject to public consultation as part of the current live application, and I have had sight of these representations. Consequently, taking into account the Wednesbury principles, no one would be prejudiced by my determination of the scheme on this basis.
11. Consequently, the plans for which approval are sought are site location plan RL001 rev H, and the land use and building height parameters plans PP01 rev F, and PP02 rev I. I have treated all other plans submitted with the application as being illustrative.
12. A draft Unilateral Undertaking was provided to the Council on 10 January 2023. This included the sum of £1.3 million pounds to be provided as a contribution for affordable housing. Following this, the Council confirmed that its planning witness considered with the addition of the affordable housing contribution, the

material considerations associated with the proposed development indicated that the appeal should be allowed (PID.2).

13. Following the close of the Inquiry a certified copy of the completed unilateral undertaking under s106 of the Town and Country Planning Act 1990 was submitted. This document includes planning obligations relating to eligibility to live in the specialist older person's housing; controls over the operators of the Extra Care, Close Care and nursing home element of the development; the delivery of all supporting infrastructure on site; an off-site affordable housing contribution; biodiversity enhancement, including the provision of an orchard; improvements to public transport infrastructure; highway improvements; travel plans, monitoring, and including the provision and operation of electric minibuses; sustainable urban drainage; and the Council's administrative costs in processing the unilateral undertaking. I consider this below.
14. I am aware of local residents' disappointment that the Council did not actively pursue its original reasons for refusal. Nonetheless, all those who wished to speak were provided with the opportunity to be involved in the Inquiry. Moreover, notwithstanding the Council's position, it falls to me to determine the appeal.

Background and Main Issues

15. The access from Ellesmere Road has already been built as part of the existing development associated with the vineyard and it is considered to meet the appropriate technical standards. The detailed internal road layout and access is a matter to be determined at the reserved matters stage.
16. Concerns relating to highway matters underpinned two of the Council's reasons for refusal, including the impact of any additional traffic on the highway network and the accessibility of the site. Following the receipt of further technical information, the Highway Authority accepted, with the imposition of appropriate conditions and planning obligations, that these should fall away. Nonetheless, highway matters remain of concern to interested parties.
17. From what I have read, heard, and seen; I consider the main remaining issues to be:
 - whether the appeal site represents an appropriate location for a continuing care community, with reference to the Council's adopted development strategy.
 - the effect of the proposed development on the appearance of the immediate and wider area.
 - the extent of the benefits of the proposed development.
 - whether any development plan conflict and harm arising is outweighed by other material considerations.

Reasons

Appropriateness of location

18. The development strategy set by Policy CS1 of the Shropshire Local Development Framework: Adopted Core Strategy March 2011 (CS) is to direct development to Shrewsbury. Policy CS2 of the CS provides a framework to

deliver this development. Policy S16.1 of the Shropshire Council Site Allocations and Management of Development Plan, adopted 2015, (SAMDev) has refined this to include a defined settlement development boundary for Shrewsbury.

19. The appeal site sits on the western side of Ellesmere Road which forms part of the settlement boundary for Shrewsbury as defined by Policy S16.1 of (SAMDev). Therefore, for the purposes of the development plan, it is in open countryside. In addition, as a site close to the edge of Shrewsbury, it is not within an area defined as a Community Hub or Cluster as set out in Policy CS4 of the CS.
20. The proposed development of a continuing care community including supporting facilities does not fall within any categories of development which are deemed to be appropriate within the open countryside as defined by Policy CS5 of the CS. Moreover, as the proposed open market continuing care community is not an exception site for affordable housing, it does not meet the tests set out in policy MD7a of the SAMDev.

Conclusion

21. Consequently, I conclude that the appeal proposal is contrary to the locational policies CS1, CS2, CS4 and CS5 of the CS, and S16.1 and MD7a of the SAMDev. As such, this would result in harm to the development strategy of the adopted plan which is to concentrate the majority of development within the settlement boundary of Shrewsbury.

Appearance of the immediate and wider area

22. The appeal site lies within the open countryside, defined as Estate Farmlands within the Shropshire County Council Landscape Typology.
23. The landscape does not benefit from any specific statutory designation relating to its landscape quality or visual amenity. It is considered to be of medium sensitivity to housing according to the Shropshire Landscape and Visual Sensitivity Assessment Study, Gillespies 2018.
24. I have been referred to the classification of the land as part of a category 1 site within the Shrewsbury Landscape Character Survey produced by the CPRE. However, this study does not have any statutory status, and does not, in contrast to the Landscape and Visual Appraisal provided by the appellant and considered to be appropriate by the Council's professional landscape consultant, accord with the most up to date Guidelines for Landscape and Visual Assessment (LVA). Moreover, it relies on survey work over 20 years old. Consequently, I have given it no weight in my determination of this appeal.
25. Similarly, reference has been made to the site forming part of a Green Wedge in the Big Town Plan. Whilst I am aware the Big Town Plan has informed the production of the e SLP, it has no statutory status.
26. The application is in outline only, with all matters reserved other than access. Consequently, the detail of the design of the scheme is not before me. However, a land use parameter plan (PP01 rev F) which identifies a broad location for the elements of the proposed scheme, together with a plan setting out the parameters for the maximum height of the buildings, in terms of the number of storeys, have been provided, (PP02 rev I) together with other

illustrative documentation including a landscaping plan. During the Inquiry, the maximum height of the buildings was confirmed in metres. These maximum heights are agreed to be consistent with the accompanying illustrative material which informed the LVA and the wider application.

27. The appellant and Council agreed a Landscape Statement of Common Ground which identified that the issue of landscape and visual effects narrowed down to the impact of the appeal proposal on users of Ashfield Recreation ground during the winter months and private views from homes in Ashfield Road.
28. The recent existing development has involved significant earth works. As a result of the new access road and grassed area, together with the Winery, glamping units, and vineyard straddling the southern slopes, the appeal site has a more managed character than the traditional farming landscape to the north of Hencote Lane. In addition, I am aware that there is an extant, unimplemented planning permission 19/05538/FUL for an additional 20 glamping units which would sit on the brow of the small hillock visible from Ellesmere Road and the Ashfield Recreation Ground. Nonetheless, there remains a clear dichotomy between the suburban developments to the east of Ellesmere Road, and the open countryside north of the wooded riverbeds to the west, including the appeal site.
29. I have visited the publicly accessible wider area more than once, both as a pedestrian and driver. The appeal site, which rises up from the wooded riverbed below provides an attractive vista and transition from the outskirts of Shrewsbury to the rural landscape beyond. However, it is clear to me that the views into the site are, as agreed by the Council and appellant's landscape experts, limited by the topography of the wider area and therefore make a localised contribution. In addition, the wider landscape is characterised by a mix of wooded areas, and open grassland, shrubland, large mature trees and hedgerow which partially screen and filter the views into the site.
30. I am aware that in the past the public were able to access the site, enjoying views over Shrewsbury and, when the weather obliged, tobogganing in the snow. In addition, residents of Ashfield Road whose homes back onto the recreation ground no doubt can enjoy attractive views across the site as part of the wider landscape, as can residents of the properties to the north of the recently constructed Winney Hill View and nearby properties, including the White House. However, as the appeal site is private land, and there are no public rights of way within it, I must restrict myself to consideration of public views. As such I have discounted any views to the south from Hencote Lane to the west of the telecommunications mast. In my judgment, the most significant publicly accessible views are those from the pavement along Ellesmere Road immediately opposite the site, although the view reveals itself when approaching from Hubert Way; the footpath from Ashfields Road; and Ashfields recreation ground; together with those achieved from the public footpath along Hencote Lane.
31. I am aware of concerns that have been raised by local residents about the hedging, along the south of Hencote Lane, which has been allowed to grow quite high and the fencing which has been erected. The Council's enforcement team has investigated this and considers the matter closed. I¹ have no reason to suggest otherwise.

¹ ID7

32. The overarching design of the proposed continuing care development is split into four separate identities. Winney Hollow would be the easternmost area of the development and would be closest to Ellesmere Road. It would include a four-storey nursing home (maximum height of 14.5 m), closest to Ellesmere Road as well as some close care units ranging in height from one, to two and a half storeys high (maximum of 11.4 m). However, these heights are expressed as maxima and are to be controlled, as will the detailed elements of the design by a further reserved matters application.
33. These buildings are proposed to be located where they could take advantage of the changes in the topography so as not to appear domineering. Nonetheless, even after 15 years after which time much of the landscaping will have matured, the appellant's LVA does concede that in the winter, when the buildings would be more visible, there would be a moderate adverse effect (Table 7.1 U.1) on users of the Ashfields recreation ground, who would look directly over Ellesmere Road into the site.
34. Similarly, in winter, when the screening effect of the existing and proposed landscaping and trees would be less effective, those walking or driving along Ellesmere Road, and those approaching from Yellowheart Lane, would be affected by the scale and extent of the unavoidable urbanisation as a result of the new development. These views would be transitory, and the impact most acute in the winter months, but nonetheless the proposal would negatively alter the visual experience of those travelling through the immediate area.
35. I have concluded there would clearly be a change in the character of the area, given the built development, along the public footpath, close to the northern boundary where it corresponds with Hencote Lane. However, combined with the significant changes in levels, views into the site would not be significantly affected, as they would be filtered and screened by the proposed additional landscaping, including the orchard at the easternmost end of the site, together with the existing trees and hedgerows and fencing. Consequently, even in the winter months, the visual impact of the development would not have a substantive impact on those walking the route who, in any case, would not have direct views over the site as the footpath PROW (0443/95/2), runs broadly parallel to the site, other than where it diverts to the north past the mobile phone mast.
36. My site visits took place in winter when the existing trees and planting are at their barest. Even so, the screening effect of the existing trees, hedgerows and rough shrubland gave me comfort that the proposed development could be, for the most part, successfully assimilated into the wider landscape and whilst there would clearly be a change to both the character and appearance of the appeal site, this could be mostly restricted in its impact other than when viewed from Ashfields Recreation Ground and specific lengths of Ellesmere Road.
37. However, this would require a careful and considered design, the details of which would need to be approved at reserved matters stage. This would include consideration of both existing, and planned site levels together with ensuring that the height of the buildings is controlled. The landscaping plan would need to be sensitive to the wider and immediate landscape character and native flora. Large, mature specimen trees, appropriate planting, the provision of an orchard characteristic of the local landscape, together with the provision of an

attenuation pond and land devoted to achieving biodiversity net gain would all need to be integrated to produce a development which would, for the most part, as set out in the appellant's LVA, result in negligible impacts.

Conclusion

38. The proposed development, the details of which are to be decided as part of any forthcoming reserved matters application, would not have an adverse impact on the appearance of the wider landscape, nevertheless, it would have a localised visual impact. Over the long term, when viewed from the Ashfields Recreation Ground, even in the best scenario, this would result in a moderate adverse impact in the winter months.
39. This residual visual adverse impact would result in limited harm given its very local impact, and that it would be most evident in the winter months when the landscaping would be less dense. However, I consider it would nonetheless be contrary to Policies CS6 and CS17 of the CS, and MD2 of the SAMDev which cumulatively require developments amongst other things to protect and enhance the local character of an area.

Extent of the benefits of the proposed development

Housing Need for Older People

40. Of the policies to which I have been referred, I consider Policies CS6, CS11, of the CS, and Policy MD3 of the SAMDev to be relevant to the provision of older persons housing. They set out that older persons' housing is to be delivered as part of general market housing development, or as windfall housing within the settlement boundaries. I am aware that some new specialist housing has come forward in Shropshire as illustrated in Table 7.1 of Mr Corden's Proof of Evidence.
41. Prior to the Inquiry, both parties provided me with a signed Further Statement of Common Ground. Paragraph 8 stated that both agreed that there was a need for older persons housing both within the plan period, and beyond. This is a truism. The question is whether older people in Shropshire have a choice of appropriate housing to meet their needs now, and whether it is appropriate to treat older people's housing tenure as an undifferentiated requirement.
42. Nationally, the NPPG states that there is a critical need to provide older persons housing and to offer a better choice of accommodation to meet their needs². Shropshire already has a higher than national level of over 75s³. This demographic is forecast to increase by 90% by 2038.
43. The proposed continuing care community already has a preferred operator in Lifecare Residences, and if allowed, it could be open by 2026. By this time, the Council suggest it will be reasonable to assume some need for sheltered/retired housing and for further bedspaces. The appellants consider the need for extra care housing and bedspaces to be more immediate suggesting a requirement for 1,059 extra care units, and 750 ensuite bed spaces now.

Housing with care

²CD 2.2.

³ CD1.6

44. The Council predominantly relies on the use of prevalence rates based on the over 75s to determine the need for specialised older persons housing⁴ (SHMA). However, I consider that this approach is fundamentally flawed⁵. It presupposes, at a fixed point in time, that the level of older persons housing and nursing care provision was appropriate to provide the optimum choice of tenure, care, and housing needs for Shropshire's elderly population.
45. There is no qualitative assessment of the existing accommodation for the elderly, and the extent to which the choice and availability of housing products, including the ability to own the leasehold of a property influences older people's decisions to move into more appropriate housing to enable them to lead as independent lives as possible.
46. I am aware of the Housing Needs Survey for Shropshire which has recently taken place and that its preliminary conclusions accord with the Council's prevalence rates. However, I am not convinced that the response to the questions relating to future preferences for care should be relied upon. This is because those questioned were over 55 rather than the over 75s, the age the prevalence rate calculation is predicated upon. It can be reasonably assumed that someone who is over 55 may have a very different understanding of their housing and care needs than a person some 20 years older⁶.
47. Consequently, I prefer the appellant's methodology based on Housing in Later Life⁷. This takes into account the tenure of housing. This figure, which I accept is not totally transparent, suggests a figure of 30 units of extra care market housing per 1000 of population aged over 75, or 3%. This contrasts starkly with the existing provision in Shropshire of 3.1 units per 1000⁸ in an area which has higher than average levels of home ownership. There is no exact science for determining the level of need for older person's housing or care needs, as it is dependent on a number of variables which relate to the individual circumstances of that person, including the wider environment, building stock, and social network in which they live. However, I am confident even in a rural county such as Shropshire, notwithstanding the Council's worthy objective of helping to keep the elderly in their own homes and communities, that were the need for extra care older person's housing not to be at the quantum put forward by the appellant, it is substantially above that suggested by the Council.
48. There is a pressing need now in Shropshire, which will only become more acute in the future, for new older person's housing with care, with only 405 units of extra care housing⁹ currently provided (CDU.2) and of that, only 120 units are for owner occupiers. Moreover, no compelling evidence has been put forward that this level of immediate need can be satisfied elsewhere.

⁴ CD1.6

⁵ APP/Q3115/W/20/3265861

⁶ Daniel Corden PoE para 9.23.

⁷ CD3.3

⁸ Table 20 U2

⁹ Ibid.

Residential care

49. In Shropshire, as is the case nationally, many of those living in care homes do not enjoy private ensuite accommodation. This is because the beds are in converted older properties or were built when it was considered appropriate for care home residents to share bathrooms. I am aware that the 2002 minimum standards for care homes have since been rescinded, nonetheless, the principle of providing high quality accommodation for the elderly still holds good. The appellant's need figure for residential care home beds, derived by the Laing Buisson methodology, is lower at 2,578 beds than that of the Council at 3,000 as of 2020¹⁰. However, the appellant's approach to discount beds from the supply which do not provide private washing facilities, with benefits both for disease control and residents' dignity, results in a greater emphasis on providing more capacity now, with a requirement of 750 bedspaces.
50. I accept that the Care Quality Commission inspects care homes to ensure that they meet required standards which do not include access to private washing facilities. However, this does not alter the fact that 28% of those in residential or nursing homes in Shropshire do not have access to a private toilet and wash hand basin¹¹.
51. I fully accept the need for a choice in accommodation, including its cost, and that there may be potential residents who are happy to share a bathroom. Nonetheless, it is reasonable to assume that there is a need to provide a choice of residential care accommodation built to modern care standards for those considering going into a home. The Council have already accepted in the Statement of Common Ground for the Need for Specialist Housing for Older People, that at 2025 there will be a further need for more residential care beds. Consequently, I conclude, even if a conservative approach was taken which did not discount all non ensuite bedspaces from the supply, this would still result in a more pressing need to provide modern beds than that evidenced by the Council.

Conclusion

52. I have been referred to the Council's housing strategy for the elderly¹². However, I do not see any conflict between its approach, which appears to be to help facilitate the elderly staying in their homes, as long as possible, through a wide range of tools, including the use of technology such as innovative virtual wards, and the continuing care community model promoted by this scheme. Rather, I consider them to be complementary.
53. Continuing care communities, such as that proposed at Hencote, are specialised and are relatively new to the UK, providing a range of accommodation on site and care responsive to residents' needs. The concept is dependent on all three levels of care being available at the same physical location. There is no similar proposal or development in Shropshire, and it should complement the existing and developing choice in older persons housing.
54. For the purposes of this Inquiry, there is no advantage in my determining the exact extent of need for extra care housing and residential care bed spaces.

¹⁰ Proof of Evidence Nigel Newton Taylor para 5.8

¹¹ Ibid paragraph 4.15.

¹² CD.1.12

However, it is clear to me from what I have read and heard that the current unmet need for both private extra care housing and residential care (nursing home including specialist dementia care) is significant and greater than that portrayed by the Council. In the future this need is likely to become even more acute given Shropshire's aging population. Moreover, the specific model of continuing care will add to the choice available to older persons when considering their future housing needs.

55. Consequently, I conclude that the proposed development once built, will make a contribution to providing choice of high-quality accommodation, and meeting the housing needs of the significant population of older persons in Shropshire. In the light of the specific evidence put before the Inquiry, at the current time the Council's approach of relying on its Adult Care Strategy and the policies of the development plan does not appear to be contributing effectively to meeting all the housing needs of older people in Shropshire. As such, this continuing care community, which could be developed within two years as there is a named operator linked to the site, would result in a significant benefit by providing new close care and extra care housing within an innovative model for those who wish to purchase their accommodation. Similarly, the provision of a modern 75 bed nursing home and dementia unit will help meet the housing and care needs of older persons and would be a significant benefit of the scheme. Cumulatively, these contributions of specialist older persons housing are a matter of substantial weight.

Release of housing stock

56. The majority of those moving to the continuing care community are likely to release general housing stock back onto the market. This could provide the opportunity for other, potentially younger, families to purchase around 200 homes. I consider this to be a significant benefit of the proposal.

Highway improvements

57. I have found that the highway improvements to be delivered through the S106 obligation meet the tests set out in paragraph 56 of the Framework. Nonetheless, the following would also provide a wider public benefit: the reduction in the speed limit within the vicinity of the access to the site, the improvement of the bus shelters advisory cycle lanes on Ellesmere Road as well as a contribution to the improvement of the footpath known colloquially as Yellowheart Lane (PROW0443/3/1), together with the provision of a dropped curb crossing, and pavement via a S278 arrangement. Collectively, I consider these to be a moderate benefit of the proposal which should be given moderate weight.

Biodiversity

58. The proposed orchard, together with a wider biodiversity enhancement plan will be implemented to provide and maintain a 13% net gain in biodiversity over the lifetime of the development. This is to be controlled through the unilateral undertaking. I consider that this benefit should be accorded moderate weight and is consistent with paragraph 179b of the Framework.

Economic benefits

59. The proposed development is likely to deliver 155 FTE operational jobs, and £75 million of inward investment to the area. In addition, there will be the

short-term economic benefits associated with the construction of the development of 460 jobs over a two-year period and £65 million of spend. Given the quantum of immediate need for older persons housing which cannot be provided for elsewhere, and therefore, would not transpire, I accord this economic benefit significant weight.

Health benefits

60. No compelling evidence has been put to me to counter the claims referred to by the appellant of substantive mental and physical health benefits to those living in such communities, as well as potential savings and operational advantages to the National Health Service, of around £1000 per annum per resident¹³.
61. Wider benefits include the alleviation of pressure on hospital beds through otherwise well patients being able to return to their home and thereby freeing up beds for those who have an urgent, or elective, medical need. Whilst the impact from this particular proposal may not be numerically significant at a particular point in time, the immediate benefit for an individual requiring a hospital bed is significant. Consequently, I accord the associated health benefits both to the residents of the continuing care community and those accessing the NHS significant weight.

Whether any development plan conflict and harm arising is outweighed by other material considerations

62. On the basis of the conflict with the policies outlined above, I conclude that the proposed development would conflict with the development plan as a whole.
63. Planning law is clear, in line with S38 (6) of the Planning and Compulsory Purchase Act, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
64. However, in this case, I have found substantial benefits resulting from the proposed development. These principally relate to the provision of 164 units of specialist older persons' accommodation in addition to a 75-bed nursing home and dementia unit, which could be provided by early 2026. I give this positive benefit which would contribute towards meeting a pressing need for older persons housing substantial weight.
65. Similarly, the freeing up of around 200 homes within the housing stock is a significant benefit to which I accrue significant weight.
66. It was agreed at the Inquiry that the continuing care community is likely to have a positive impact on the resources of the NHS and the health and wellbeing of those living at the development. I consider that this benefit should be given significant weight, as should the wider positive impacts on the health service. I have also concluded that significant weight should be given to the economic benefits of the proposed development.
67. I have determined that moderate weight should be given to the improvements to the public transport infrastructure and local highway improvements as well as the increase in biodiversity net gain, including the provision of an orchard in perpetuity.

¹³ Para 7.7 U2

68. In sum, the benefits of the scheme are substantial and compelling in the planning balance. Consequently, having taken all of the above into account, in the particular circumstances of this case, these benefits would outweigh the harm that I have identified and the conflict with the development plan. In such circumstances, material considerations indicate that planning permission should be granted otherwise than in accordance with the development plan.

Other Matters

69. I am aware of the significant public interest in the proposed development including representations made by local Councillors, the Town Council, representatives of the Shrewsbury Civic Society, the local Friends of the Earth and the Shropshire CPRE.
70. The use of the site has intensified on an incremental basis. However, my understanding is that all the existing developments on the site have planning permission. Therefore, whilst I appreciate that these changes may have been unwelcome to some, they present the planning context in which I must make my decision.
71. I have been referred to concerns raised by local residents relating to the impact of the proposed development on the ecology of the appeal site and that of the wider immediate area, including the Old River Bed Shrewsbury Local Wildlife Site and the Old River Bed SSSI which lies on the other side of Ellesmere Road. However, there is no technical evidence before me to suggest, subject to appropriate conditions including a construction environmental management plan condition, together with the planning obligation relating to the implementation of a plan to achieve biodiversity net gain, that the appeal proposal would result in harm to matters of ecological importance. Similarly, the protection of trees can be achieved by the imposition of relevant conditions. In addition, the land lost from viticulture will be replaced with land at the western end of the vineyard.
72. I have carefully considered the potential impact of the proposed development on those living nearby, including from light and noise pollution, as well as from the impact of the buildings themselves, and concluded, due to the changes in levels and distance, together with controls which can be imposed as part of any reserved matters applications, that a satisfactory development could be achieved which would not result in substantive harm. Any construction works will result in unavoidable temporary disruption to those living nearby. However, the detailed provisions within the Construction Management Plan should reduce this.
73. Other concerns have been raised about potential damage to homes from building works. However, the technical consideration of how the development is to be constructed and any potential impacts from the construction process is not a planning matter, nor is any potential loss in property values.
74. No technical objections have been raised in relation to drainage, flood risk, and water run-off, subject to the provision of a sustainable urban drainage system for the site, although I am aware of local concerns. Moreover, there is no evidence to suggest that there is not sufficient capacity to deal with the sewage associated with the site.

75. The proposed development would result in the loss of the existing glamping units and the further potential 20 units which have the benefit of planning permission. Given that the extant planning permission has not been implemented this would not result in any harm to the local leisure economy. However, the removal of the existing glamping units will have an unavoidable, albeit very limited impact.
76. Local residents have expressed concerns relating to highway safety and the impact of the proposed development on the highway network and have expressed cynicism as to whether the proposed highway improvements, such as the advisory cycleway and dropped kerb to provide a pedestrian crossing will be safe or utilised. However, the Highway Authority is content, subject to the proposed conditions, planning obligation and S278 improvements, that the scheme, which is not dependent on the construction of the North West Relief Road, poses no threat to highway safety and the wider highway network from congestion. There is nothing before me to lead me to disagree with the Highway Authority's position.
77. As set out above, the appeal site is private land with no rights of access within it. Consequently, the proposed development will not result in the loss of any publicly accessible recreational space.
78. I am aware that the continuing care community may be targeted at a relatively affluent customer base, including those from outside of Shropshire. However, there is no reason why older persons within Shropshire, or indeed beyond, should be afforded less choice in the housing market than younger people who are able to choose, subject to their financial position, between a range of housing costs. Moreover, whilst the development is intended to be relatively self-sufficient, residents will be able to mix with the wider community given the minibuses which are to be provided and the nearby public transport.
79. Other concerns have been raised that there is not the health infrastructure available to support those living on the site, including health care. However, the concentration of elderly people with care needs in a geographical area would reduce the distance for any health professional to travel including GPs, and facilitate an efficient use of health resources, and, as set out below, is likely to result in financial savings to the NHS.
80. I note that questions have been raised as to the appropriateness of the site for elderly persons with care needs given the difference in levels on the site. However, the documentation accompanying the appeal illustrates how this could be addressed, such as through accessing buildings at different levels. Moreover, I have been referred to existing similar communities in the Malvern Hills and the Cotswolds, which I understand operate successfully on land as steep, or even steeper than the appeal site.
81. Detailed design considerations, including internal access arrangements can be controlled through the subsequent reserved matters applications. This will enable the protection of the significance of the non-designated heritage assets at Crosshills, and Hencote Farm.

Planning Obligation

82. A signed unilateral undertaking has been provided by the appellants and relevant title holders to the land.

83. The planning obligation includes contributions to increase the uptake of alternatives to the car. These can be split into off-site improvements such as £10,000 to provide and improve bus shelters on Ellesmere Road; £10,000 to provide advisory cycle lanes between the site and an existing pedestrian/cycle route along Hubert Way to the south, and into Shrewsbury Town Centre; £20,000 to improve the footpath running from the top of Onslow Drive and Ellesmere Road, known informally as Yellowheart Lane (PROW0443/3/1); and a £20,000 contribution to monitor the Travel Plan over ten years for those living and working at the continuing care community. Two electric minibuses of an appropriate size are to be operated throughout the lifetime of the development.
84. Traffic safety is to be improved by a £10,000 contribution towards a Traffic Regulation Order to reduce the speed limit within the vicinity of the site access to ensure that safe access and egress to the site can be achieved. These obligations are necessary to ensure that the development is acceptable and accords with Policy MD8 of the SAMdev in relation to infrastructure and appropriate capacity.
85. A biodiversity enhancement plan would, when implemented, result, together with the planting and maintenance of an orchard to the north of the site in a 13% net gain in biodiversity. This will protect and enhance the biodiversity of the scheme consistent with Policies CS6 and CS17 of the CS, and Policy MD12 of the SAMdev.
86. Other controls over the older persons accommodation, including the provision of care and eligibility of residents, as well as the provision and maintenance of all supporting ancillary facilities are included in the obligation. This is to ensure that the development is operated in an appropriate manner and occupied by those who have specialist housing and care needs.
87. I have been provided with a compliance statement setting out how the elements of the planning obligation meet the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended and paragraph 57 of the Framework. I am content, on the basis of the information provided to me, that all the contributions described above meet the test of necessity; are directly related to the development and are fairly and reasonably related in scale and kind.
88. During the Inquiry, it was considered appropriate to include the provision, and management of a sustainable urban drainage system within the planning obligation. This is also necessary for the lifetime of the development and meets the relevant tests.
89. The unilateral undertaking includes a contribution of £1.3 million, index linked, to spend on off-site affordable housing in the Shrewsbury Place Plan Area. If this were not to be spent within the first five years, it could then be used throughout the whole of Shropshire. I note that both the Council and the appellant consider that this sum of money would meet the legal tests and I have been referred to CS11 of the CS, which requires housing to provide affordable housing, as well as a reference to the lack of affordable housing in the relevant officer's report relating to this application. Nonetheless, it is clear the lack of affordable housing was not considered to be a reason to withhold planning permission even when the proposed development was considered to fall within Class C3 of the Use Classes Order. If it had been, logically, it would have formed a reason for refusal.

90. Prior to the Inquiry the Council conceded that the housing within the continuing care community fell with Class C2 of the Use Classes Order. It is clear from the original Statement of Common Ground that the Council did not consider that there was a policy basis to require an affordable housing contribution¹⁴. I have carefully considered the correspondence that I have received on this from both parties, including consideration of the shortage of affordable housing for carers, set out in Ms Tyler's evidence. The financial contribution will go to a general affordable housing pot. Therefore, there is nothing to suggest that care workers would directly benefit from this. Consequently, I conclude that the affordable housing contribution, whilst no doubt welcome to the Council and providing a wider community benefit does not meet the legal tests. Therefore, I have not taken it into account as part of the planning obligation in reaching my decision.

Conditions

91. A list of planning conditions was discussed at the Inquiry. Following the end of the Inquiry a revised list of agreed conditions, including pre-commencement conditions was provided by the parties. However, in the interests of clarity and conciseness I have made minor changes to the conditions and where appropriate deleted superfluous conditions given the unilateral undertaking referred to above.
92. Conditions 1-3 set out the standard time limitations for an outline planning permission. Conditions 4 -7 and 19 clarify the relevant plans for the outline permission and the general development principles which are to be followed including the maximum number of units to be provided and the control of the ground levels at which the buildings will be constructed. These are required to ensure a visually acceptable development. Condition 8 is required to avoid any potential for contamination from the development. Condition 9 is required both to manage the construction phase of the development, including environmental protections, but also to protect the amenity of local residents.
93. Conditions 10-14 and 18 provide further protection for matters of ecological importance including trees. Condition 15 relates to the control of surface water and foul drainage for the site. Condition 16 reflects the need for archaeological assessment of the site.
94. Given the importance of the landscaping of the site condition 17 requires a landscaping plan as one of the first reserved matters applications. Condition 20 requires a phasing condition to ensure the infrastructure is delivered at the appropriate time. Conditions 21-23 require appropriate highway related matters, including the provision of a parking plan are provided. Lastly, condition 24 is required to ensure that all the residential accommodation is wheelchair accessible to provide for the mobility needs of the residents.
95. I have removed a condition relating to electric charging points as this is not necessary as it duplicates building control regulations. I understand that the Council wished to control the location of the electric charging points and to ensure that the minibuses were able to be fully operational and charged. However, I am confident that the location of any charging points would be controlled by condition no 22 which relates to a reserved matters application for details of the level and location of parking spaces.

¹⁴ Paragraph 5 Statement of Common Ground 22.12.22

Conclusion

96. For the reasons given above I conclude the appeal should be allowed.

Louise Nurser

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Paul Tucker, King's Counsel.

Ms Stephanie Hall Counsel

Instructed by Ms Lizzie Marjoram of LLB Bird Wilford & Sale.

They called:

Mr James Rand MSc, MCIHT Paul Basham Associates.

Mr Tom Wigglesworth BSc (Hons), Director EDP.
MSc, MCIEEM

Ms Ruth Bishop BSc (Hons), MA, CMLI Associate Director, Savills.

Mr Nigel Newton Taylor BSc (Hons), Director, Healthcare Property Consultants
MRICS Ltd.

Mr James Donagh BA (Hons), MCD Director Barton Willmore.
MIED

Mr Richard Shaw BA (Hons), Senior Associate Director, Savills.
Dip Urb Des, MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards of Counsel.

Instructed by Head of Legal Services, Shropshire County Council.

He called:

Mr Daniel Corden BSc (Hons), MSc, Principal Planning Policy Officer, Shropshire
MPlan, MRTPI County Council.

Mr Kelvin Hall BSc (Hons), PGDip, Principal Planning Development Control
MRTPI Officer, Shropshire County Council.

Ms Laura Tyler BA (Hons) Assistant Director of Joint Commissioning
Shropshire Council and Shropshire, Telford
and Wrekin Integrated Care Systems.

INTERESTED PARTIES:

Mr Benedict Jephcott	Local resident.
Mr Michael Dinneen, FinstAM (AdvDip) MinstLM	Chair, Shrewsbury Civic Society.
Mr Michael Davies	Local resident.

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 Statement of Common Ground on C2 Need.
- ID2 Opening submissions of the Appellant.
- ID3 Opening submissions of the Council.
- ID4 Proposed Site Visit Itinerary.
- ID5 Written statement of Mr Benedict Jephcott.
- ID6 Revised planning conditions 25 1 23.
- ID7 Letter dated 21 December 2022 from Shropshire Council re closure of enquiry re fence and hedging.
- ID8 Historic map with PRow overlay.
- ID9 Written statement of Mr Michael Dinneen, Chair Shrewsbury Civic Society.
- ID10 Revised planning conditions 26.1.23
- ID11 Shrewsbury Big Town Plan 2018.
- ID12 Revised unilateral undertaking 26.1.23- tracked changes and clean version for engrossment.
- ID13 Written statement of Mr Keith Davies.
- ID14 Closing submissions of Mr Hugh Richards on behalf of the Council.
- ID15 Closing submissions of Mr Paul Tucker KC and Stephanie Hall on behalf of the Appellant.
- ID16 Final draft conditions.

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- ID17 Shrewsbury Place Plan.
- ID18 S106 Unilateral Undertaking- certified copy.
- ID19 Letter dated 15 February 2023- Examination of Shropshire Local.

SCHEDULE OF CONDITIONS

1. Details of the appearance of the development, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby approved, which relates to the site edged red on drawing no. RL001 rev H (Red Line Boundary Plan), shall be carried out in accordance with the details shown on drawing nos. PP01 rev F (Land Use Parameter Plan) and PP02 rev I (Building Heights Parameter Plan).
5. No element of any building on any part of the development hereby permitted shall exceed the following as measured from adjacent ground level:

Extra Care/ Close care units

- 1 storey - 7m
- 1.5 storey - 8.4m
- 2 storey - 10m
- 2.5/3 storey - 11.4m.

Nursing Home

- 4 storeys: 14.5m

Amenities Building

- 12.65m

6. Any reserved matter applications shall be in general accordance with the principles set out in the Planning Statement (updated August 2022 Rev E), the Indicative Landscape Masterplan (page 25 of Planning Statement August 2022 Rev E), the Design and Access Statement (updated December 2022) and the Landscape Strategy (updated October 2022).
7. The number of units provided as part of the development hereby permitted shall not exceed 164 Extra Care and Close Care units and a 75 bed Nursing Home.
8. No development shall take place until a report detailing a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental

Protection Act 1990 in relation to the intended use of the land after remediation.

- A) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
 - B) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with Land contamination: risk management (Environment Agency, 2019) or any successor document and must be submitted to and approved in writing by the Local Planning Authority.
 - C) Where remediation is necessary a remediation scheme must be prepared and implemented which must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. Once the measures have been completed a Verification Report shall be provided to and approved by the Local Planning Authority to demonstrate that the contaminated land has been made safe in relation to the intended use of the site.
9. No development shall take place, including any work of demolition, until a detailed Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority, and the plan shall include the following:
- a) Safe Access and vehicle routing
 - b) Hours of operation and deliveries, site office locations, and storage of materials details.
 - c) 24 hour emergency contact number.
 - d) Vehicle parking, turning, and loading arrangements.
 - e) Construction Traffic Management Plan.
 - f) Construction Dust Management Plan including wheel washing measures to control the emission of dust and dirt during construction including on the public highway.
 - g) Waste management plan.
 - h) Measures to limit noise and vibration from construction activities.
 - i) Risk assessment of potentially damaging construction activities.
 - j) Identification of "biodiversity protection zones".
 - k) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.

- l) The location and timing of sensitive works to avoid harm to biodiversity features.
- m) The times during construction when specialist ecologists need to be present on site to oversee works.
- n) Responsible persons and lines of communication.
- o) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - i. Compliance with legal consents relating to nature conservation;
 - ii. Compliance with planning conditions relating to nature conservation;
 - iii. Installation of physical protection measures during construction;
 - iv. Implementation of sensitive working practices during construction;
 - v. Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
 - vi. Provision of training and information about the importance of 'biodiversity protection zones' to all construction personnel on site.
- p) Use of protective fences, exclusion barriers and warning signs.
- q) Measures to provide temporary localised surface water run-off management systems for construction stage activities.
- r) A soil management plan for construction stage activities.
- s) Pollution prevention measures, particularly in relation to The Old River Bed SSSI, as specified in section 5 of the Ecological Appraisal dated December 2021 reference edp7067_r002.

All construction activities shall be implemented strictly in accordance with the approved CEMP.

10. No development shall take place (including level changes) until a Habitat Management Plan (HMP) expanding upon the information provided within the Ecological Appraisal dated December 2021 reference edp7067_r002, including the Biodiversity Metric document and the proposed Landscape Strategy, detailing, in full, measures to protect existing habitat during construction works and the formation of new habitat, to secure a habitat compensation value of no less than 2.67 Habitat Units and 0.62 Hedgerow Units, as illustrated in the Ecological Appraisal dated December 2021 reference edp7067_r002 report, has been submitted to and approved in writing by the Local Planning Authority. Within the HMP document the following information shall be provided:

- A) Current soil conditions of any areas designated for habitat creation and detailing of what conditioning must occur to the soil prior to the commencement of habitat creation works (for example, lowering of soil pH via application of elemental sulphur);
- B) Details of species composition and abundance where planting is to occur;

- C) Proposed management prescriptions for all habitats for a period of no less than 25 years;
- D) Assurances of achievability;
- E) Timetable of delivery for all habitats; and
- F) A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition as well as description of a feed-back mechanism by which the management prescriptions can be amended should the monitoring deem it necessary. The development shall thereafter be undertaken in accordance with the approved CEMP/HMP.

11.A: No development shall take place until:

- A) protective fencing and ground protection for trees proposed for retention within the Cheshire Woodlands Tree Protection Plan and Arboricultural Method Statement CW/10609-P-TP has been installed. The fencing and ground protection shall be maintained throughout the duration of the construction of the development.
- B) a construction specification and method statement addressing hard surfacing and the routing of services near to trees has been submitted and received written approval by the local planning authority and the development shall be carried out in accordance with that scheme.
- C) a consulting arboriculturist has been appointed to undertake supervision and monitoring of the tree protection fencing and other measures on the tree protection plan at pre-commencement stage. A completion statement shall be submitted to the local planning authority which demonstrates compliance with the approved tree protection measures.

B: No trees shall be removed as part of the development other than those identified for removal within the Cheshire Woodlands Tree Protection Plan and Arboricultural Method Statement CW/10609-P-TP.

12.No development or vegetation clearance shall take place until a District Level Licence with respect to great crested newts has been obtained from Natural England and submitted to the Local Planning Authority and thereafter complied with.

13.No development shall take place until a badger inspection shall be undertaken by an appropriately qualified and experienced ecologist and the outcome reported in writing to the Local Planning Authority. Such inspection is to be carried out within six weeks prior to the date of submission to the Local Planning Authority. If new evidence, or a change in status, of badgers is recorded during the pre-commencement survey then the ecologist shall submit a mitigation strategy for approval by the Local Planning Authority before development commences that sets out appropriate actions to be taken during the works. These measures will be implemented as approved.

- 14.No development shall take place, or subsequent phase until an Ecological Impact Assessment shall be submitted, together with any required phase 2 surveys, the assessment to i) establish if there have been any changes in the presence and/or abundance of species or habitats on the site and ii) identify any likely new ecological impacts and mitigation requirements that arise as a result.

Where update surveys show that conditions on the site have changed (and are not addressed through the originally agreed mitigation scheme) then a revised updated and amended mitigation scheme, and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development (or commencement of the next phase). Works will then be carried forward strictly in accordance with the proposed new approved ecological measures and timetable.

- 15.No development shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before any part of the development is occupied/brought into use (whichever is the sooner) and retained thereafter for the lifetime of the development.
- 16.No development shall take place until an archaeology written scheme of investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The investigation and works shall be carried out as approved.
- 17.The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include:
- A) Planting plans, creation of wildlife habitats and features and ecological enhancements (following the specification of Section 5 of Ecological Appraisal dated December 2021 reference edp7067_r002).
 - B) Written specifications for establishment of planting and habitat creation to include replacement planting of failed specimens within five years of planting;
 - C) Schedules of plants/seed mixes, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
 - D) Implementation timetables. Native species used are to be of local provenance (Shropshire or surrounding counties).
 - E) Details of maintenance.
 - F) The plan shall be carried out as approved and thereafter retained and maintained in accordance with the approved plan

18. Not later than the first submission of reserved matters shall include an external lighting plan. The lighting plan shall demonstrate that the proposed lighting will not impact upon ecological networks and/or sensitive features taking into account the Bat Conservation Trust's Guidance Note 08/18 Bats and Artificial Lighting in the UK or any successor document. The development shall be carried out strictly in accordance with the approved details and thereafter retained for the lifetime of the development.
19. Not later than the submission of the first reserved matters for approval shall include full details of the finished levels above ordnance datum of the ground floor(s) of the proposed building(s) and a plan showing all existing and proposed ground levels. The development shall be carried out in accordance with the approved levels.
20. Not later than the submission of the first reserved matters application, a phasing plan should be submitted to and approved in writing by the Local Planning Authority. The plan shall address any phasing of the proposed development and phasing of the proposed infrastructure. It shall ensure that the vehicular access roads, footways and other infrastructure necessary to service the permitted development is provided at appropriate times throughout the development. Works shall be delivered in accordance with the approved phasing plan.
21. Not later than the submission of the first reserved matters application details of the proposed footway provision within the development and proposed improvements along Ellesmere Road, to include the delivery of a pedestrian crossing should be submitted to and approved in writing by the Local Planning Authority. The details shall be carried out as approved. The scheme shall be fully implemented in accordance with approved details prior to occupation and retained thereafter.
22. Not later than the submission of the first reserved matters application details of the proposed level of parking and allocation, should be submitted to and approved in writing by the Local Planning Authority. Any parking plan should be developed in association with a Travel Plan for the site that provides details of how sustainable travel to and from the site should be promoted for residents, staff and visitors to be site. The details / plan shall be carried out as approved. The scheme shall be fully implemented in accordance with approved details prior to occupation and retained thereafter.
23. Not later than the submission of reserved matters on layout, a scheme detailing the design and construction of all new internal roads, footways and accesses together with measures for the disposal of highway surface water shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in accordance with approved details prior to occupation and retained thereafter.
24. All dwellings at the site shall be built to the M4(3) (wheelchair user dwellings) standard within Building Regulations.